

**IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER**

IN THE MATTER OF:

RAHN EISCHEID
Carroll County

ADMINISTRATIVE CONSENT ORDER
NO. 2007-AFO- **11**

TO: Rahn Eischeid
16519 230th Street
Carroll, Iowa 51401

I. SUMMARY

This administrative consent order is entered into between Rahn Eischeid and the Iowa Department of Natural Resources (DNR) for the purpose of resolving the issues surrounding a manure discharge at Mr. Eischeid's facility. In the interest of avoiding litigation, the parties have agreed to the provisions below.

Questions regarding this administrative consent order should be directed to:

Relating to technical requirements:

Matt Rhodes, Field Office 4
Iowa Department of Natural Resources
1401 Sunnyside Lane
Atlantic, Iowa 50022
Phone: 712/243-1934

Relating to legal requirements:

Kelli Book, Attorney for the DNR
Iowa Department of Natural Resources
7900 Hickman Road, Suite 1
Urbandale, Iowa 50322
Phone: 515/281-8563

Payment of penalty to:

Director, Iowa Dept. of Natural Resources
Wallace State Office Building
502 East Ninth Street
Des Moines, Iowa 50319-0034

II. JURISDICTION

This administrative consent order is issued pursuant to Iowa Code section 455B.175(1) which authorizes the Director to issue any order necessary to secure compliance with or prevent a violation of Iowa Code Chapter 455B, Division III, Part 1 or 2005 Iowa Code Supplement Chapter 459A and the rules adopted or permits issued pursuant thereto, and Iowa Code section 455B.109 and 567 Iowa Administrative Code (IAC) chapter 10, which authorize the Director to assess administrative penalties.

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III. STATEMENT OF FACTS

1. Rahn Eischeid owns and operates an open cattle feedlot located at 16510 230th Street in Carroll, Iowa 51401 (Section 5, T83N, R35W, Carroll County, Iowa). The feedlot has an animal capacity of approximately 250 animals. The feedlot is located approximately 60 feet from Brushy Creek.
2. On Friday, December 16, 2005, DNR Field Office 4 received an anonymous complaint stating manure was flowing into Brushy Creek. DNR Field Office 4 began the investigation the evening of December 16, 2005. Manure liquid was present in Brushy Creek. Due to darkness, the investigation was suspended until Monday, December 19, 2005.
3. On December 19, 2005, DNR Field Office 4 continued its investigation. DNR Field Office 4 personnel observed dead fish, specifically carp, in Brushy Creek at the crossing of State Highway 71. DNR Fisheries were contacted regarding the fish kill.
4. Over the course of next two weeks, DNR Field Office 4 continued the investigation. The investigation included field observations, photographs, and collection of samples. During the investigation manure was tracked upstream of Brushy Creek and to Mr. Eischeid's feedlot. On December 19, 2005, manure liquids and solids were observed flowing from the feedlot directly to Brushy Creek. The feedlot did have rudimentary manures controls, but the controls were not working properly as manure was allowed to flow directly into Brushy Creek.
5. On January 12, 2006, DNR issued a Notice of Violation to Mr. Eischeid for the violations noted during the investigation of the Brushy Creek fish kill. The letter cited water quality and prohibited discharge violations. The letter also informed Mr. Eischeid further enforcement action may follow. On January 13, 2006, DNR sent a copy of the Report of Investigation to Mr. Eischeid.

IV. CONCLUSIONS OF LAW

1. 2005 Iowa Code Supplement section 459A.401(1) and 567 IAC 65.101(1) require the minimum level of manure control for any open feedlot shall be the removal of settleable solids from the manure prior to discharge into a water of the state. DNR Field Office 4 observed manure solids from Mr. Eischeid's facility in Brushy Creek. The above-facts disclose a violation of this provision.
2. Iowa Code section 455B.186 prohibits the discharge of pollutants into water of the state, except for adequately treated pollutants discharged pursuant to a permit from the DNR. A permit has not been issued for this facility and DNR Field Office 4 found evidence of the discharge of untreated pollutants into waters of the state. The above-facts indicate a violation of this provision.

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3. 567 IAC 61.3(2) provides general water quality criteria and prohibits discharges that will produce objectionable color, odor or other aesthetically objectionable conditions; settle to form sludge deposits; interfere with livestock watering; or are toxic to animal or plant life. DNR Field Office 4 observed manure solids from Mr. Eischeid's facility in Brushy Creek. The above-facts disclose a violation of one or more of these criteria.

V. ORDER

THEREFORE, the DNR orders and Mr. Eischeid agrees to do the following:

1. Mr. Eischeid shall pay a penalty of \$5,000.00. The penalty shall be paid to the DNR in accordance with the following payment schedule;

\$2,500.00 due April 1, 2007, and
\$2,500.00 due April 1, 2008.

2. Mr. Eischeid shall consult with either NRCS or Iowa State Extension within 90 days of the date the Director signs this administrative consent order to develop and implement appropriate manure controls at his feedlot and shall submit his Plan of Action to DNR Field Office 4.

VI. PENALTY

1. 2005 Iowa Code Supplement section 459A.502 and Iowa Code section 455B.191 authorize the assessment of civil penalties of up to \$5,000.00 per day of violation for each of the water quality violations involved in this matter.

2. Iowa Code section 455B.109 authorizes the Environmental Protection Commission (Commission) to establish by rule a schedule of civil penalties up to \$10,000.00, which may be assessed administratively. The Commission has adopted this schedule with procedures and criteria for assessment of penalties in 567 IAC chapter 10. Pursuant to these rules, the DNR has determined that the most effective and efficient means of addressing the above-cited violations is the issuance of an administrative consent order with an administrative penalty. The administrative penalty assessed by this administrative consent order is \$5,000.00. The administrative penalty is determined in accordance with the following:

Economic Benefit – Failure to properly contain all manure has allowed Mr. Eischeid to save time and money. However Mr. Eischeid has taken steps to install proper manure controls, making any economic benefit received to be minimal. No economic benefit is being assessed.

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Gravity of the Violation – One of the factors to be considered in determining the gravity of a violation is the amount of penalty authorized by the Iowa Code for that type of violation.

As indicated above, substantial civil penalties are authorized by statute. Despite the high penalties authorized, the DNR has decided to handle the violations administratively at this time, as the most equitable and efficient means of resolving the matter. Actual harm to the environment was documented by visual and olfactory observation of impact to Brushy Creek, including dead fish. Multiple rule or statutory provisions were violated including discharge

to water of the state, failure to maintain the minimum manure controls, and violation of water quality standards. The violations threaten the integrity of the water quality program. Additionally, a large amount of DNR staff time was expended in investigating the Brushy Creek fish kill. Therefore, \$1,000.00 is assessed for each violation cited in this administrative consent order for a total of \$3,000.00 for this factor.

Culpability – All feedlot operators have a duty to remain knowledgeable of the DNR's requirements and to be alert to the probability that the operator's conduct is subject to DNR's rules. Prior to the investigation, Mr. Eischeid's feedlot did not have adequate manure control and as a result, manure was allowed to flow into Brushy Creek. Based on the above considerations, \$2,000.00 is assessed for this factor.

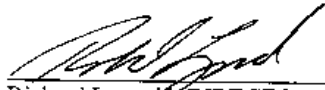
VII. WAIVER OF APPEAL RIGHTS

This administrative consent order is entered into knowingly by and with the consent of Rahn Eischeid. For that reason, Mr. Eischeid waives the right to appeal this administrative consent order or any part thereof.

VIII. NONCOMPLIANCE

Failure to comply with this order, including failure to timely pay any penalty, may result in the imposition of further administrative penalties or referral to the attorney general to obtain injunctive relief and civil penalties pursuant to Iowa Code section 455B.191. Compliance with Section "V. Order" of this administrative consent order constitutes full satisfaction of all requirements pertaining to the specific violations described in Section "IV. Conclusions of Law" of this administrative consent order. The DNR reserves the right to bring enforcement action, including penalties, or to request that the attorney general initiate legal action to address other violations not described in Section "IV. Conclusions of Law" of this administrative consent order but which may arise from the facts summarized in Section "III. Statement of Facts" of this administrative consent order. DNR specifically reserves the right to pursue enforcement action, including penalties, for any current violations not specifically cited in this order.

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Richard Leopold, DIRECTOR
Iowa Department of Natural Resources

Dated this 28 day of
April, 2007.



RAHN EISCHEID

Dated this 15th day of
April, 2007.

#No number; DNR Field Office 4; Kelli Book; Ken Hessenius; EPA; VIII.D.1.b, VIII.D.3.a